

## CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Aliza Klingenstein	Team: Squad #16	CCRB Case #: 202103998	<input type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Tuesday, 07/06/2021 4:46 AM	Location of Incident: § 87(2)(b)	Precinct: 34	18 Mo. SOL 1/6/2023	EO SOL 1/6/2023	
Date/Time CV Reported Tue, 07/06/2021 11:09 AM	CV Reported At: CCRB	How CV Reported: On-line website	Date/Time Received at CCRB Tue, 07/06/2021 11:09 AM		

Complainant/Victim	Type	Home Address
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)

Witness(es)	Home Address
§ 87(2)(b)	§ 87(2)(b)

Subject Officer(s)	Shield	TaxID	Command
1. PO Nicholas Caniglia	10226	955783	020 DET
2. PO Erick Estrada	11358	967497	034 PCT
3. PO Saul Rodriguezcarrasco	14456	967667	034 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. PO Steven Garcia	19718	969717	034 PCT

Officer(s)	Allegation	Investigator Recommendation
A. PO Saul Rodriguezcarrasco	Abuse: Police Officer Saul Rodriguezcarrasco entered § 87(2)(b)	§ 87(2)(b)
B. PO Nicholas Caniglia	Abuse: Police Officer Nicholas Caniglia entered § 87(2)(b)	§ 87(2)(b)
C. PO Erick Estrada	Abuse: Police Officer Erick Estrada entered § 87(2)(b)	§ 87(2)(b)

### Case Summary

On July 06, 2021, § 87(2)(b) filed this complaint via the CCRB on-line website.

On July 06, 2021, at approximately 4:46 a.m., at § 87(2)(b) in Manhattan, Police Officers Saul Rodriguezcarrasco and Erick Estrada, both of the 34<sup>th</sup> Precinct, and Police Officer Nicholas Caniglia, who was assigned to the 34<sup>th</sup> Precinct at the time of this incident but is currently assigned to the 20<sup>th</sup> Precinct Detective Squad, entered § 87(2)(b)'s residence (**Allegations A-C: Abuse of Authority**, § 87(2)(g)).

This case was originally assigned to former Investigator Matthew Donaghy, and upon their departure from the CCRB the case was reassigned to Investigator Aliza Klingenstein on June 01, 2022.

Four body-worn camera (BWC) videos were obtained from PO Estrada, PO Caniglia, Police Officer Steven Garcia of the 34<sup>th</sup> Precinct, and PO Rodriguezcarrasco (**Board Review 01-04, respectively**). The footage captures the duration of this incident.

### Findings and Recommendations

**Allegation (A) Abuse of Authority: Police Officer Saul Rodriguezcarrasco entered § 87(2)(b)**

**Allegation (B) Abuse of Authority: Police Officer Nicholas Caniglia entered § 87(2)(b)**

**Allegation (C) Abuse of Authority: Police Officer Erick Estrada entered § 87(2)(b)**

§ 87(2)(b) testified that he lived at § 87(2)(b) with his partner, § 87(2)(b) (Board Review 05). § 87(2)(b)'s friend, § 87(2)(b) had been staying at the apartment for approximately one week prior to July 06, 2021. § 87(2)(b) testified that he left his friends' apartment on July 06, 2021, at approximately 4:00 a.m., to smoke a cigarette (Board Review 06). § 87(2)(b) left the door to § 87(2)(b) unlocked and closed, but he forgot his building keys, so after he exited the building, he realized he was locked outside. § 87(2)(b) stood outside the building and waited for someone to exit. Five to ten minutes later, PO Caniglia, PO Garcia, PO Estrada, and PO Rodriguezcarrasco arrived at the building entrance. The officers asked § 87(2)(b) if he was a resident of the building, and § 87(2)(b) stated that he was not a resident but was staying with friends in § 87(2)(b). The officers buzzed § 87(2)(b) but no one responded. An individual exited the building, and the officers and § 87(2)(b) entered the lobby and went upstairs. The officers knocked on the door to § 87(2)(b) but no one answered. PO Rodriguezcarrasco, PO Caniglia, and PO Estrada entered § 87(2)(b) and stood approximately three feet inside the apartment. § 87(2)(b) testified that he and § 87(2)(b) were asleep in their bedroom when he possibly heard a knock at the front door, but he ignored it. § 87(2)(b) then heard his front door open and voices inside the apartment. § 87(2)(b) woke up and saw that his bedroom door was open, which he always kept closed, and flashlights shone in different directions inside the apartment. § 87(2)(b) exited his bedroom and saw PO Rodriguezcarrasco inside the apartment, a second officer either in the threshold of the front door or one step inside the apartment, and two additional officers outside in the hallway. PO Rodriguezcarrasco asked § 87(2)(b) if he knew § 87(2)(b) and § 87(2)(b) confirmed that they did. PO Rodriguezcarrasco stated that that was all he needed to know, and the officers left.

Event #§ 87(2)(b), created on July 06, 2021, at 4:42 a.m., reports a burglary in progress at § 87(2)(b) and describes the suspect as a White male, age 34, 5'7" tall, wearing a white t-shirt, blue jeans, black socks, and no shoes (**Board Review 07**). § 87(2)(b) stated he believed a resident called 911 on him after he asked them to hold the door for him, but the person refused to do so.

In PO Estrada's BWC at 1:40, PO Estrada and PO Rodriguezcarrasco enter the front vestibule of § 87(2)(b) where § 87(2)(b) (who matches the Event description) sits on the floor outside the building front door (**Board Review 01**). At 1:44, PO Estrada asks § 87(2)(b) if he lives in the building or is trying to go home, and § 87(2)(b) responds, "I'm housesitting, I just locked myself out." At 1:52, PO Estrada again asks § 87(2)(b) if he lives in the building, and § 87(2)(b) states he lives in § 87(2)(b) and confirms the building address. At 2:05, PO Estrada asks § 87(2)(b) if he needs help to get inside, and § 87(2)(b) says yes. At 2:21, § 87(2)(b) states that the friend he is housesitting for is currently asleep and that he went outside to smoke but forgot his keys. At 2:37 and 3:19, PO Estrada buzzes the intercom to § 87(2)(b) but there is no response. At 3:40, a male civilian opens the building front door, and at 3:48, PO Estrada states, "Alright, let's go inside. I wanna make sure that you live in that apartment." § 87(2)(b) and the officers walk to the elevator.

In PO Caniglia's BWC at 1:10, PO Caniglia arrives at § 87(2)(b) as the male civilian opens the building door for PO Estrada (**Board Review 02**). At 1:28, PO Caniglia enters the lobby behind PO Rodriguezcarrasco, and PO Rodriguezcarrasco tells PO Caniglia that § 87(2)(b) was in the vestibule and stated he is housesitting an apartment in the building for his friend. § 87(2)(b) and the four officers ride the elevator to the § 87(2)(b) floor. At 2:55, PO Rodriguezcarrasco knocks on the door to § 87(2)(b) but there is no response. At 3:33, PO Rodriguezcarrasco knocks again, and § 87(2)(b) states, "Uh, door should be open, by the way." At 3:41, PO Rodriguezcarrasco opens the door to § 87(2)(b) takes one step inside, and asks § 87(2)(b) who stands in the hallway, if anyone is inside the apartment. § 87(2)(b) states there are two people, and at 3:53, PO Rodriguezcarrasco stands approximately six feet inside the apartment and walks farther inside. At 4:07, PO Caniglia enters the apartment behind PO Rodriguezcarrasco.

In PO Garcia's BWC at 4:03, PO Caniglia enters § 87(2)(b) and PO Estrada leans his upper body into the doorway, opens the bedroom door to the left of the front door, and shines his flashlight into the bedroom (**Board Review 03**). At 4:12, PO Estrada leans into the bedroom and states, "Hey, how you doing? Can you come out real quick brother?" At 4:15, PO Estrada steps back into the hallway, and PO Caniglia exits the apartment at 4:19. At 4:29, PO Rodriguezcarrasco remains in the apartment in front of the bedroom door, and the officers confirm that the residents know § 87(2)(b).

PO Rodriguezcarrasco testified that he was the first officer to enter § 87(2)(b) and he did so because he believed § 87(2)(b) had granted the officers permission to enter when he stated that the door was unlocked (**Board Review 08**). PO Rodriguezcarrasco believed it was appropriate to enter the apartment to verify with the residents that § 87(2)(b) was allowed to be there, and although the officers could have done this while remaining outside the apartment, it was faster to enter and contact the residents directly. PO Rodriguezcarrasco testified that this verification was necessary to determine whether to arrest § 87(2)(b) for burglary, which they would have done if he was not allowed to be inside the apartment. PO Estrada testified that although he never stepped foot inside the apartment, he placed his chest and upper shoulder through the doorway to ask § 87(2)(b) to step outside, so the officers could verify § 87(2)(b) was allowed to be there (**Board Review 09**).

PO Caniglia testified that, since he arrived on scene as backup for PO Rodriguezcarrasco and PO Estrada, he entered § 87(2)(b) for no reason other than to provide backup for PO Rodriguezcarrasco, who entered first (**Board Review 10**). PO Caniglia did not know why PO Rodriguezcarrasco

decided to enter the apartment and did not recall any emergencies at play, but he assumed PO Rodriguezcarrasco and PO Estrada had learned something prior to PO Caniglia's arrival that justified their entry into § 87(2)(b).

Payton v. New York, 445 U.S. 573 held that the breach of the entrance to an individual's home is an entry (**Board Review 11**). Officers may enter a premise when they have a warrant authorizing such entry. There are few exceptions to entering a premise without a warrant, including exigent circumstances, the emergency doctrine, hot pursuit, plain view doctrine, and voluntary consent.

People v. Cosme, 48 N.Y.2d 286 held that officers may enter a dwelling when they have obtained the voluntary consent of a party who possesses the requisite degree of authority and control over the premises to be entered (**Board Review 12**).

It is undisputed that PO Rodriguezcarrasco and PO Caniglia entered § 87(2)(b)'s residence, and the investigation determined that when PO Estrada placed his upper body through the doorway, he also entered as per Payton v. New York. While PO Rodriguezcarrasco and PO Estrada testified that they entered to verify information as they investigated the alleged burglary, it is undisputed that the officers could have verified this from the hallway. As § 87(2)(b) told the officers he was housesitting for his friends, he acknowledged that he did not live at the location, and he therefore lacked the authority and control required to consent to the officers' entry as per People v. Cosme. Further, PO Caniglia was on scene for three minutes prior to entering § 87(2)(b) he was informed of what happened from PO Rodriguezcarrasco, and he went up to the § 87(2)(b) floor with the other officers. § 87(2)(g)

§ 87(2)(g) the officers did not have a warrant to enter the apartment, nor did any of the exceptions noted in Payton v. New York apply to this incident, PO Rodriguezcarrasco, PO Estrada, and PO Caniglia entered § 87(2)(b)'s residence § 87(2)(g)

### **Civilian and Officer CCRB Histories**

- This is the first CCRB complaint to which § 87(2)(b) § 87(2)(b) and § 87(2)(b) have each been a party.
- PO Rodriguezcarrasco has been a member of service for three years and this is the first CCRB complaint to which he has been a subject.
- PO Caniglia has been a member of service for eight years and this is the first CCRB complaint to which he has been a subject.
- PO Estrada has been a member of service for three years and has been a subject in one other CCRB complaint and one other allegation, which was not substantiated. § 87(2)(g)

### **Mediation, Civil, and Criminal Histories**

- This complaint was not suitable for mediation.
- As of April 14, 2022, the New York City Office of the Comptroller has no record of a Notice of Claim being filed in regards to this incident (**Board Review 13**).
- § 87(2)(b)

Squad: 16

Investigator:	<u>Inv. Klingenstein</u>	<u>Inv. Aliza Klingenstein</u>	<u>June 30, 2022</u>
	Signature	Print Title & Name	Date

Squad Leader:	<u></u>	<u></u>	<u></u>
	Signature	Print Title & Name	Date

Reviewer:	<u></u>	<u></u>	<u></u>
	Signature	Print Title & Name	Date